

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 907 / 2015

Dr. Sanjay Gupta S/o Shri M.P.Gupta, Aged about 56 years,  
Resident of 23, Jaswant Building, Railway Station Road, Jodhpur  
and working on the post of Junior Specialist (Medicine) at E.S.I.  
Hospital, Jodhpur (Rajasthan).

----Petitioner

Versus

1. State of Rajasthan-Through Principal Secretary, Medical &  
Health Department, Government of Rajasthan, Secretariat,  
Jaipur (Rajasthan).

2. The Director (Public Health), Medical & Health Services,  
Jaipur.

----Respondents



For Petitioner(s) : Mr. A.K.Rajvanshy

For Respondent : Mr. Anil Bissa, AGC

**HON'BLE MR. JUSTICE SANGEET LODHA**

**Order**

**06/10/2017**

1. By way of this writ petition, the petitioner is seeking directions to the respondents for payment of arrear of pay and allowances admissible to the post of Junior Specialist (Medicine) from the date of actual occurrence of the vacancy of the said post, on which he was promoted vide order dated 27.7.01.

2. The relevant facts are that the candidature of the petitioner holding the post of Medical Officer was considered by the Departmental Promotion Committee for promotion to the post of Junior Specialist (Medicine) against the vacancies of the year 1995-96, however, on account of pendency of the disciplinary proceedings under Rule 16 of Rajasthan Civil Services

(Classification, Control & Appeal) Rules, 1958 (for short "the Rules of 1958"), his result was kept in sealed cover. Later, on exoneration of the petitioner in the disciplinary proceedings, sealed cover was opened and the petitioner was promoted to the post of Junior Specialist (Medicine) against the vacancies of the year 1995-96 vide order dated 27.7.01 on the basis of seniority-cum-merit and accordingly, was assigned the seniority. The fixation of the petitioner was made in the pay scale admissible to the post of Junior Specialist (Medicine) giving notional benefits, however, the actual benefits were extended to the petitioner from the date of actual joining on the post i.e. 1.8.01. After a lapse of about 12 years, the petitioner served the respondents with a notice for demand of justice claiming actual benefits arising out of his promotion to the post of Junior Specialist (Medicine) against the vacancies of the year 1995-96. The respondents vide communication dated 22.3.13 informed that as per the circular dated 15.4.94 issued by the Department of Finance, from the date of occurrence of the vacancies notional benefits are admissible and actual benefits are payable only from the date of joining. Hence, this petition.

3. Learned counsel appearing for the petitioner contended that the petitioner is entitled for the actual benefits from the date of occurrence of the vacancy and thus, the action of the respondents in denying him the actual benefits and granting only notional benefits is ex facie illegal and arbitrary. Learned counsel submitted that the junior persons promoted on the post of Junior Specialist (Medicine) against the vacancies of the year 1995-96, have been



extended the benefits of promotional post, however, the same has been denied to the petitioner.

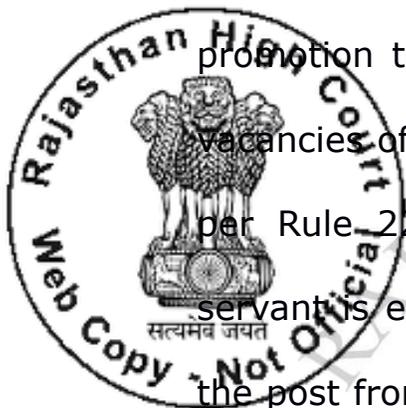
4. On the other hand, the counsel appearing for the respondents submitted that on account of the pendency of the disciplinary proceeding against the petitioner, his result was kept in sealed cover and later, on exoneration, he has been accorded promotion to the post of Junior Specialist (Medicine) against the vacancies of the year 1995-96. Learned counsel submitted that as per Rule 22 of Rajasthan Service Rules, 1951, a Government servant is entitled to get benefits of pay and other allowances of the post from the date he/she actually joins on the post and since

the petitioner had joined the duties of the post w.e.f. 1.8.01, while making the notional fixation, the actual benefits were extended to him from the said date. Learned counsel submitted that against the order issued in the year 2001, admittedly, the petitioner had raised a grievance after lapse of about 12 years and thus, the writ petition filed claiming the benefits after inordinate delay deserves to be dismissed on this count alone.

5. Replying the arguments of the respondents regarding the delay in filing the petition, learned counsel submitted that the petitioner is suffering recurring loss and therefore, the delay in filing the petition should not come in his way.

6. I have considered the rival submissions and perused the material on record.

7. Indisputably, the petitioner's candidature was considered against the vacancies of the year 1995-96 and the review DPC convened on 20.9.97 for promotion to the post of Junior Specialist



(Medicine) on the basis of seniority-cum-merit, however, on account of pendency of the disciplinary proceedings under Rule 16 of the Rules of 1958, his result was kept in sealed cover. Thus, the petitioner stood deprived of immediate promotion to the post of Junior Specialist on account of the pendency of the disciplinary proceeding against him. After exoneration in the disciplinary proceedings, the order promoting the petitioner on the post of Junior Specialist was passed way back on 27.7.01 and accordingly, while giving him benefits of notional fixation, the actual benefit was extended from the date of joining on the post i.e. 1.8.01. It is not disputed before this court that the petitioner did not raise any grievance against the denial of actual benefits for all these years.

The grievance regarding the relief claimed in the petition was first time raised by the petitioner before the respondents by way of notice of demand of justice dated 29.11.14 and the present writ petition has been filed on 19.1.15 and thus, the petition filed claiming the relief as aforesaid after a lapse of about 14 years, badly suffers from delay and laches and deserves to be dismissed on this count alone.

8. The contention of the petitioner that on account of the impugned action of the respondents, the petitioner is suffering recurring loss is devoid of any merit inasmuch as, on promotion being accorded against the vacancies of the year 1995-96, fixation of his pay has already been made in the pay scale admissible to the post of Junior Specialist while extending notional benefits and thus, the question of recurring loss does not arise.



9. Accordingly, the writ petition is dismissed. No order as to costs.

(SANGEET LODHA), J.

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